

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No.141 2003 (M/S)

Smt. Resham Devi

Versus.

Pritam Singh

Approved for reporting.

~~Not approved for reporting~~

Date of decision 3.8.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 141 of 2003 (M/S)

Smt. Resham Devi		Petitioner
	Versus	
Pritam Singh		Respondent

Hon. Rajesh Tandon J.

By this writ petition the petitioner has prayed for a writ of certiorari praying for the quashing of the orders passed by the Prescribed Authority as well as the Appellate Authority by which application under section 21(1)(a) of U.P. Act No. XIII of 1972.

Brief facts giving rise to the present writ petition are that the landlord ha filed an application under section 21(1)(a) of the U.P. Act No. XIII of 1972 praying for the release of the property situated at the first floor of 88/89/90 Garhi Cantt, Dehradun in possession of the petitioner, who is a tenant. The landlord respondent Pritam Singh has filed an application stating therein that his family consists of the following members:

- (a) Self
- (b) Wife
- (c) Son Jasvinder Singh
- (d) Jasvinder Singh's wife
- (e) Jasvinder Singh's daughter (22 yrs.)
- (f) Second son Surendra Singh,
- (g) Surendra Singh's Wife
- (h) Surendra Singh's three children.

The application for the release was filed for requirement of the family members of the landlord on the ground that the accommodation in which the landlord is residing is wholly insufficient to cater the requirement of the family members. Further the tenant has constructed his own house within the Municipal limits of 31, Garhi Cantt., Dehradun, which is lying vacant and is available to him and, therefore, the hardship lies in favour of the landlord and no hardship shall be caused to the petitioner. Is was stated in the release application by the landlord that the tenant has available with him two small rooms, when in point of fact the landlord requires atleast 9-10

rooms. At present, the landlord has available with him only three room accommodation.

The petitioner has contested that application under section 21(1) (a) of the U.P. Act No. XIII of 1972 by filing the written statement and it was denied that he acquired accommodation at 71 Garhi Cantt, Dehradun. So far as the requirement of the landlord is concerned, it was stated by the petitioner that Jasvinder Singh, his son, is employed at Bombay and the second son is at Dehradun and his earning is 2000/- per month.

So far as the bona fide need of the landlord is concerned, the Prescribed Authority has observed that the landlord has available with him only three rooms, when in point of fact the landlord has a family consisting of his wife and two married sons.

According to the landlord, two rooms each are required for family members. The landlord at present has six rooms. The first floor accommodation is only in possession of the landlord, and due to the paucity of the accommodation, he is not able to cater the requirement of the family members. So far as the comparative hardship is concerned, the petitioner has already constructed his own house at Garhi Cantt.

During the pendency of the case, the Prescribed Authority has made local inspection of the building. The Prescribed Authority has found that there are only two rooms, which are in possession of the landlord and the residential part with the land is very narrow, when in point of fact while considering hardship it has come on the record that three properties namely, 449, 450 and 450A in which there are three residential rooms at property no. 72 Garhi Cantt consisting of two room, verandah and open place of 77' X 47' and property no. 192 consisting of three rooms are in possession of the petitioner. Therefore, so far as the property in dispute is concerned, the comparative hardship lies in favour of the landlord, rather than tenant. The Prescribed Authority has allowed the application.

Aggrieved by the order passed by the Prescribed Authority, the petitioner went in appeal. The appellate Court after considering the entire evidence on record, recorded the finding that the landlord is residing on the first floor on the three room accommodation and the tenant-petitioner has constructed his own house 31 Garhi Cantt, Dehradun as well as property no. 19 Nibuwala, and property no. 448 and 449 Garhi Cantt, Dehradun. As such, the landlord shall suffer greater hardship than the petitioners. The Appellate Court has, therefore, confirmed the finding recorded by the Prescribed Authority.

I have perused the evidence on record viz. the affidavit of Jasvinder Singh, Surendra Singh, paper no. 49 Ka and 50 Ka have been considered alongwith affidavit of Surjit Singh. The affidavits also disclosed that Man Mohan is residing separately and two sons of Gaiinda Lal, namely, manoj and Bipin are residing separately at 1/1 on the second storey and all the children are residing separately. The entire set of tenants are residing separately in separate accommodation and as such the bona fide need as well as comparative hardship, both lies in favour of the landlord. The Appellate Authority has also considered regarding the inspection note of the Prescribed Authority paper no. 87 Ka, in which it is mentioned that there are only two rooms with the landlord and just in between two rooms there is a kitchen and tin shed and room of 8' X 8' in possession of the landlord.

The Prescribed Authority has also inspected the following premises owned by the petitioner.

- (i) 97 Garhi Cantt, Dehradun,
- (ii) 448, where on the first floor there is room of 17 X 8' and on the ground floor there is a shop,
- (iii) property 314 Garhi Cantt. In which there is a shop on the ground floor and room on the first floor,
- (iv) property no. 449,450 and 450A Nibuwala, where three rooms ave been found,

(v) 72 Garhi Cantt. Consisting of two room, open verandah and courtyard, 77' X 47',

(vi) property no. 19A Ambagh consisting of two rooms and

(vii) property no. 19 Nibuwalla consisting of three rooms.

Apart from that there are other properties which have been found in possession of the tenant like, 97 Garhi Cantt., 103 Garhi Cantt., which have been released during the pendency of the case in favour of the petitioner.

The Appellate Authority has also on the basis of the personal appearance of the landlord has found that he is an old person and there is anxiety of the landlord to settle his family members. Both the Courts below, therefore, have concurrently recorded the finding of *bona fide* need and comparative hardship in favour of the landlord.

It has been held by the apex Court that the question of *bona fide* need and comparative hardship, cannot be a matter of interference under Article 226 of the Constitution of India.

In the case of Mrs. Meenal Eknath Kshirasagar VS. M/S Traders and Agencies 1996 Vol 5 SC 635 the Apex Court after relying upon the Judgment in Pranva Devi VS. T.V. Krishnan has held that the landlord is the best judge of his residential requirement. The observations are quoted below:

“In Pranava Devi Vs. T.V. Krishnan to which our attention has been drawn by the learned counsel for the appellant, this Court has pointed out the correct test which has to be applied in finding out whether the requirement of the landlord is *bona fide* or not. It has held that:

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. There is no law which deprives the landlord of the beneficial enjoyment of his property.”

It is further held therein that what is to be considered is not merely the availability of alternative accommodation but also whether that landlord has a legal right to such accommodation.

The Following decisions of the Bombay and Calcutta High Courts relied upon by the learned counsel for the appellant are also helpful in deciding the question of bonafide requirement of the landlord. In Dinshaw Billimoria Vs. Rustom ji Master, the Bombay High Court has held that:

“Ordinarily speaking, an owner of premises, if he says he wishes to use them for his own purposes, is entitled to do so. What the Rent Act endeavours to provide for is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a higher rent, or exact a higher rent from the tenant on a threat of eviction. It seems to me that the question in that case whether the plaintiff was reasonably dissatisfied with the premises which he rented in Giraum is irrelevant because in any event premises. He was not bound to continue to rented premises with all the uncertainties of that tenure.”

The Calcutta High Court in Basant Lal Saha Vs. P.C. Chakravarty has observed as under:-

“Where a landlord seeks to eject a tenant on the ground of bonafide requirement within the meaning of Provisio(f) of Section 11(1) of the Rent Control Act. 1948, he has to satisfy three tests:-

- (i) That he “requires” the premises;
- (ii) That such requirement is for his “own occupation”; and
- (iii) That his requirement is “*bona fide*”.

The word “require” means more than mere wish or convenience or fancy of the landlord. The landlord must show some need or necessity.

But it does not mean an absolute need or an absolute requirement in the sense that the landlord will not have any accommodation of any description and that he must actually be in street before he can demand his own house for his own occupation.” The High Court has also observed there that while considering the question of bonafide requirement the nature and character of landlord’s temporary accommodation at time when he is asking for a decree for possession, the insecurity or otherwise of the ensure that he might be holding at the time, the fact that he himself is under a notice to it, the scope, size and character of his requirement are all relevant factors that the court has to consider.

In Ramandera Mohan Guha Sarkar Vs. Smt Bedana Paul, the Calcutta High Court as observed that if a person is in occupation other premises on leave and licence, they are obviously not available to the landlord for occupation and cannot be taken into account negative the claim of the landlord to the decision of this Court in Phiroze Bamanji Desai s Chandrakant M. Patel, it further observed

that possession of a license is precarious and cannot be considered suitable alternative accommodation.”

Similar view has been taken in the case of Smt. Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC page no. 103. The relative finding are quoted below:-

“ When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bonafide. When other condition of the clause are satisfied and when the landlord shows a prima facts case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bonafide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafide of the requirement of the landlord it is quite unnecessary to make an endeavor as to how else the landlord could have adjusted himself.”

Both the Courts below have recorded a finding of fact that the landlord has got only two-roomed accommodation and there are more than 10 family members and as such the need of the landlord is *bona fide* and greater hardship was in comparison to the tenant, who has his own various accommodations, has been taken into consideration by the Prescribed Authority as well as the Appellate Authority at the time of inspection.

In the case of Joginder Pal Vs. Naval Kishore Behal, 2002 Supreme Court & Full Bench Rent Cases 388, the apex Court after taking into consideration the judgment of Mst. Bega Behum and others Vs. Abul Ahad Khan(dead) by LRs and other (1979) 1 SCC 273 and Shiv Sarup Vs. Dr. Mahesh Chand Gupta, 1999, SCFBRC 330: (1999) 6 SCC 222 has held that Rent Control legislations are heavily loaded in favour of tenant considering them as weaker sections of society requiring legislature protection, but the Courts have to adopt a reasonable and balanced approach in interpreting the rent control legislation. While interpreting such a provision, care should be taken to the interest of the landlord and Courts should not hesitate in

leaning in favour of the landlord as landlords are also weak and feeble and feel humble. The observations of the Apex Court are quoted as below:

“8. The need for reasonable interpretation of Rent Control Legislation was emphasized by the Court in *Mst. Bega Behum and others Vs. Abul “Ahad Khan (dead by Lrs. And others)*, (1979) 1 SCC 273: 1986 SCFBRC 346. Speaking in the context of reasonable requirement of landlord as a ground for eviction the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In *Kewal Singh Vs. Lajwanti*, (1980) 1 SCC 290, this Court has observed while the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one eviction which is contained in almost the Rent Control Act in the contrary is the question of landlord’s bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed to make the relief granted to the landlord real and practical. Recently in *Shiv Sarup Vs Dr. Mashesh Chand Gupta*, 1999 SCFBRC 330: (1999) 6 SCC 222, the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by Courts, while interpreting the laws. But it is being uncharitable to Legislature if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants as to the landlords- both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interests of the landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlord too are weak and feeble and feel humble.

In view of the aforesaid proposition of law laid down by the Apex court, the family members of the landlord require proper residence as they are residing like the passenger in a platform in three-room accommodation.

The family of two sons, wife, mother, father and children are residing and that too is a hush for the landlord when in a point of fact the tenant is having other accommodations available with him.

In view of the aforesaid facts, the bona fide need of the landlord having been established, the two Courts below having been recorded concurrent finding of fact, no interference is called for under Article 226 of the Constitution of India in view of the law laid down by the Apex Court in the case of Surya dev Rai Vs. Ram Chander SCC 2003 Vol. 6 page 675, which has been followed in the case of Ranjeet Sdigh BVs. Ravi Prakash (2004), 3SCC 682, the apex Court has observed that under the article 227 of the Constitution of India, it Singh not permissible to re-appreciate the evidence or to reevaluate the evidence by correcting the errors in drawing the inferences like Court of appeal.

The petition is dismissed accordingly.

The tenant is allowed time to vacate the premises upto 31st January, 2005 provided he gives an undertaking before the Prescribed Authority within a period of one month and pays the entire amount due, failing which, the decree of eviction shall be executed forthwith.

(Rajesh Tandon, J.)
3.8.2004

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